

Transport and Public Works Committee

Report No. 43, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 20 May 2020 and 11 August 2020

**1 Aim of this report**

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 20 May 2020 and 11 August 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).<sup>1</sup>

In addition, the report notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

**2 Subordinate legislation examined**

| No. | Subordinate legislation  | Date tabled | Disallowance date* |
|-----|--|-------------|--------------------|
| 86  | Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2020                     | 16/6/20     | 03/12/20           |
| 89  | Transport Legislation (Fees) Amendment Regulation 2020   | 16/6/20     | 03/12/20           |
| 92  | Transport Legislation (COVID-19 Emergency Response) Regulation 2020  | 3/7/20      | TBA                |
| 119 | Housing and Public Works Legislation (Fees) Amendment Regulation 2020  | 14/7/20     | TBA                |
| 133 | Public Records (Paradise Dam) Amendment Regulation 2020  | 11/8/20     | TBA                |
| 134 | Residential Services (Accreditation) (Extension of Transitional Provision for Retirement Villages) Amendment Regulation 2020 | 11/8/20     | TBA                |
| 135 | Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020                                    | 11/8/20     | TBA                |

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change. The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.)

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

### 3 Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2020 (SL 86 of 2020)

The objectives of the amendment regulation are to:

- extend the scope of the alternative qualifications and experience that may be recognised to licence businesses and individuals during a transitional period
- extend the period during which the alternative qualification and experience provisions will apply
- enable the Queensland Building and Construction Commission (QBCC) to impose a condition on a licence, during the transitional period, which restricts the scope of work that may be lawfully performed, to match the knowledge, skills and experience of the applicant, and
- provide medical gas businesses more time to understand, and demonstrate they meet, the minimum financial requirements.

The explanatory notes provide further information about the key policy objectives:

*The key policy objectives of the Queensland Building and Construction Commission (Mechanical Services Licence) Amendment Regulation 2020 (Amendment Regulation) are to enhance the existing transitional arrangements for the mechanical services licensing framework that commenced on 1 January 2020 and support industry through the Public Health Declaration relating to COVID-19.*

*The new mechanical services licensing requirements commenced on 1 January 2020 and are regulated by the Queensland Building and Construction Commission (QBCC). The Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation) includes transitional provisions intended to recognise businesses and workers who, immediately before the mechanical services licence commenced, were undertaking work that now falls within the scope of work for the new licence.*

*Businesses and their nominees transitioning to the new framework must hold a mechanical services licence by 1 July 2020. Occupational employees and site supervisors working for a licensed contractor (or one who is undertaking the application process) do not need to be licensed until 1 January 2022.*

*Some licence applicants have had difficulty meeting or demonstrating that they meet the licensing requirements for reasons that can be categorised under two broad headings (1) transitional timeframes and (2) qualification requirements. The Public Health Declaration for the COVID-19 pandemic has further compounded these matters by rediverting industry focus to employment, introducing social distancing measures and enhanced hygiene practices.<sup>3</sup>*

In regard to the objective that enables the QBCC to impose a condition on a licence, the explanatory notes advise:

*The Amendment Regulation also enables the QBCC to issue a conditional licence restricting the scope of work that may be performed, where an applicant cannot demonstrate competence for the complete scope of work. Once issued, the licence will remain valid until it expires, is suspended or cancelled or surrendered, at which time the licensee would need to meet the licensing requirements for the complete scope of work for the licence class. These amendments will enable individuals who have been working in a sector, and who have been performing specialised work, to continue to perform that work.<sup>4</sup>*

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<sup>3</sup> Explanatory notes, pp 1-2.

<sup>4</sup> Explanatory notes, p 3.

### **3.1 Consultation**

The Department of Housing and Public Works advised the following in regard to consultation on the amendment regulation:

*The policy objectives reflected in the Amendment Regulation have been informed and refined in consultation with the QBCC. The QBCC supports the proposals and will assist industry with the changes, including messaging and communication.*

*Targeted consultation occurred with key industry peak bodies, such as the Plumbers' Union Queensland, Master Plumbers Association of Queensland, National Fire Industry Association and the Air Conditioning and Mechanical Contractors Association. All were supportive of or raised no objections to the amendments.*

*The Ministerial Construction Council were informed of the amendments and have not raised any concerns. The Council comprises representatives from the following peak industry groups:*

- *Air Conditioning and Mechanical Contractors' Association;*
- *Association of Wall and Ceiling Industries Queensland;*
- *Australian Institute of Architects;*
- *Australian Institute of Building Surveyors;*
- *Australian Manufacturing Workers' Union;*
- *Australian Workers Union;*
- *Board of Architects of Queensland;*
- *Board of Professional Engineers of Queensland;*
- *Building Products Industry Council;*
- *Construction, Forestry, Maritime, Mining and Energy Union;*
- *Construction Skills Queensland;*
- *Consult Australia;*
- *Electrical Trades Union;*
- *Engineers Australia;*
- *Housing Industry Association;*
- *Insurance Council of Australia;*
- *Landscape Queensland;*
- *Local Government Association of Queensland;*
- *Master Builders Queensland;*
- *Master Concreters Australia;*
- *Master Electricians Australia;*
- *Master Painters Queensland;*
- *Master Plumbers Association of Queensland;*
- *National Association of Women in Construction;*
- *National Fire Industry Association;*
- *Plumbers' Union Queensland;*
- *Professionals Australia;*
- *Queensland Building and Construction Commission;*

- *Queensland Council of Unions;*
- *Queensland Major Contractors Association; and*
- *Subcontractors Alliance.*

*The QBCC supports the proposals and will assist industry with the changes, including messaging and communication.*

*The Queensland Productivity Commission was consulted and advised that no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation as the amendments appear unlikely to result in significant adverse impacts.<sup>5</sup>*

### **3.2 Issues of fundamental legislative principle**

No issues of fundamental legislative principle were identified.

#### **3.2.1 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **3.3 Human Rights Act compliance**

The committee considered the following issues in regards to compliance with the *Human Rights Act 2019* (HRA).

#### Freedom of expression – section 21 HR Act

Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, in print, by way or art or other means.

The regulation allows the QBCC to issue a conditional licence restricting the type of work an individual can legally perform. This could be seen as limiting an individual's right to seek out or express information when performing work. The Minister provides this justification:

*The limitation on the freedom of expression further assists in achieving the purpose of the amendment by permitting individuals to carry out work only where they are qualified and/or experienced to the necessary standard. The limitation ensures individuals cannot perform types of work under a mechanical services licence [regarding] which they do not possess the necessary qualifications or experience to perform. A condition that restricts an individual from performing aspects of work helps achieve the purpose of ensuring the quality and safety of mechanical systems is maintained.<sup>6</sup>*

Given that the limitation ensures that only individuals who are qualified to perform the work will hold the licence, the committee is satisfied that any limit on human rights is reasonable and demonstrably justified.

#### Privacy and reputation – section 25 HR Act

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.

The regulation allows the QBCC to request an applicant's personal information, including details of technical qualifications and experience, in order to assess their eligibility for a mechanical services licence through alternative pathways during the transitional period. A person would be required to demonstrate that they meet the technical qualification and experience requirements for a mechanical services licence.

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<sup>5</sup> Explanatory notes, pp 4-5.

<sup>6</sup> Human rights certificate, p 4.

The Minister states:

*The collection of personal information under the Amendment Regulation helps to ensure appropriately qualified and experienced individuals are [licensed] for mechanical services work. The QBCC can lawfully request relevant information under section 33 and 37B of the QBCC Act to allow it to determine whether the applicant meets the licensing eligibility requirements and is appropriately trained to undertake the work. These licensing requirements have been established to protect the health and safety of the community from risks that arise from incorrect installation or maintenance of mechanical services systems. The collection of personal information under the Amendment Regulation is conducted lawfully under the QBCC Act and achieves the purpose of the licensing framework.<sup>7</sup>*

Given that this provision is to allow the QBCC to request an applicant's personal information for the purpose of determining if they are appropriately qualified and experienced individuals for mechanical services work, and that the collection of personal information under the amendment regulation is conducted lawfully under the QBCC Act, the committee is satisfied that any limit on human rights that might arise is reasonable and demonstrably justified.

### **3.3.1 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the HRA). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **4 Transport Legislation (Fees) Amendment Regulation 2020 (SL 89 of 2020)**

The objective of the amendment regulation is to increase the Department of Transport and Main Roads' fees and charges in line with the government indexation rate of 1.8 per cent.

### **4.1 Issues of fundamental legislative principle**

No issues of fundamental legislative principle were identified. All increases fall within the 1.8 per cent amount.<sup>8</sup>

#### **4.1.1 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **4.2 Human Rights Act compliance**

The subordinate legislation is compatible with human rights.

#### **4.2.1 Human rights certificate**

A human rights certificate was tabled with the subordinate. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **5 Transport Legislation (COVID-19 Emergency Response) Regulation 2020 (SL 92 of 2020)**

The stated objectives of the regulation are to:

- provide financial relief to commercial operators in State-managed boat harbours
- provide a framework that will enable exemptions from, or otherwise modify the application of, requirements about certain marine authorities

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<sup>7</sup> Human rights certificate, p 6.

<sup>8</sup> (Some increases are slightly higher, but this is due to rounding.)

- extend the expiry of a transitional regulation that preserves certain Queensland-specific definitions under national rail safety legislation.<sup>9</sup>

### 5.1 Regulations made in reliance on the *COVID-19 Emergency Response Act 2020*

The regulation is made in reliance, in part, on section 13 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act).<sup>10</sup> That Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. The Emergency Response Act applies despite any other Act or law other than the HRA.<sup>11</sup> The Emergency Response Act expires on 31 December 2020.<sup>12</sup>

In broad terms, section 13 of the Emergency Response Act provides for a power to make a regulation to modify statutory time periods.

Section 13 of the Emergency Response Act provides an additional regulation-making power for the modification by regulation of statutory time limits (such as a period within which an entity is authorised to do a thing or a period at the end of which a thing expires) in certain circumstances. Such a regulation can:

- extend a period up to 31 December 2020<sup>13</sup>
- have retrospective effect to not earlier than 19 March 2020.<sup>14</sup>

Regulations made in reliance on section 13 are ‘extraordinary regulations’ and an Act to which an extraordinary regulation applies is an ‘affected Act’.<sup>15</sup>

In relation to an extraordinary regulation:

- A Minister administering an affected Act may recommend to the Governor in Council the making of an extraordinary regulation only if the Minister is satisfied the regulation is necessary for a purpose of the Emergency Response Act.
- An extraordinary regulation may be inconsistent with the affected Act, and any other Act (other than the HRA), to the extent necessary to achieve a purpose of the Emergency Response Act.
- To the extent a person’s act or omission complies with an extraordinary regulation made under an affected Act, the person does not incur civil or criminal liability under the affected Act for the act or omission.
- An extraordinary regulation must declare that it is made under the relevant additional regulation-making provision.
- An additional regulation-making provision does not limit any other regulation-making power conferred under an affected Act.<sup>16</sup>

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<sup>9</sup> Explanatory notes, p 2.

<sup>10</sup> See the declaration at section 2 of the regulation.

<sup>11</sup> *COVID-19 Emergency Response Act 2020*, s 4(1).

<sup>12</sup> *COVID-19 Emergency Response Act 2020*, s 25.

<sup>13</sup> *COVID-19 Emergency Response Act 2020*, s 13(4).

<sup>14</sup> *COVID-19 Emergency Response Act 2020*, s 13(5).

<sup>15</sup> See *COVID-19 Emergency Response Act 2020*, s5 (1)-(3).

<sup>16</sup> See generally *COVID-19 Emergency Response Act 2020*, s 5 (4)-(8), and s 4.

An extraordinary regulation must be tabled within 14 days of notification (rather than the usual 14 sitting days).<sup>17</sup>

This regulation complies with this requirement, being notified on 19 June 2020 and tabled on 3 July 2020. The regulation expires on 31 December 2020.<sup>18</sup>

## 5.2 Declaration required by the Emergency Response Act

The regulation includes a declaration required under the Emergency Response Act, with the declaration stating:

*Section 3 of this regulation is made under the COVID-19 Emergency Response Act 2020, section 13.*<sup>19</sup>

## 5.3 Issues of fundamental legislative principle and comment

### 5.3.1 Section 4(5)(e) *Legislative Standards Act 1992* - Institution of Parliament – sub-delegation of a power

Provisions of the regulation allow:

- the chief executive to waive fees payable under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*, and
- the chief executive or general manager (Maritime Safety Queensland) to publish a notice to give effect to waivers and amendments of conditions and extensions of authorities granted under transport regulations.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of power delegated by an Act only:

- in appropriate cases and to appropriate persons; and
- if authorised by an Act.<sup>20</sup>

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power. Relevant factors to take into account include the importance of the subject dealt with and the practicality or otherwise of including those matters entirely in subordinate legislation.<sup>21</sup>

In relation to the chief executive's power to waive fees, the explanatory notes state:

*... any potential breach is considered justified as the Chief Executive's power to waive fees is limited:*

- *to circumstances arising from the current COVID-19 emergency*
- *to circumstances where waiving the fee may alleviate financial burden on commercial entities caused by the COVID-19 emergency; and*

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<sup>17</sup> See *COVID-19 Emergency Response Act 2020*, s 5 (9), and contrast s 49 (1) of the *Statutory Instruments Act 1992*.

<sup>18</sup> Section 10 of the regulation.

<sup>19</sup> Section 2 of the regulation.

<sup>20</sup> Section 4(5)(e) *Legislative Standards Act 1992*.

<sup>21</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.

- *to a specified time period, starting on 1 April 2020 and extending on 30 September 2020 and, if the Chief Executive exercises further discretion to extend this period, the extended period is limited to no later than six months after the day the COVID-19 emergency ends.*<sup>22</sup>

In relation to the powers of the chief executive and the general manager, the explanatory notes state:

*... any potential breach is considered justified as the power of the Chief Executive and the General Manager (Maritime Safety Queensland) to modify the application of the specified legislative requirements is limited:*

- *to circumstances arising from the current COVID-19 emergency*
- *to circumstances generally where requiring compliance with the condition would not be practicable or reasonable due to the COVID-19 emergency or may risk the spread of COVID-19 within the community*
- *by the modification powers only applying in a way that does not disadvantage the holder of the authority, marine licence or marine licence indicator; and*
- *to the period up until six months after the day the COVID-19 emergency ends.*<sup>23</sup>

#### Committee comment

The committee is satisfied that the breach of fundamental legislative principle is justified given the limited nature of the powers, the objectives of the regulation, and the generally beneficial effects of these provisions on individuals and commercial entities.

#### **5.3.2 Section 4(5)(d) *Legislative Standards Act 1992* – Institution of Parliament – amending statutory instruments only**

The provision extending the expiry of section 132 of the *Rail Safety National Law (Queensland) Act 2017* raises the issue of fundamental legislative principle in that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation amends statutory instruments only.<sup>24</sup>

The principle of Parliamentary law-making that an Act should only be amended by another Act of Parliament has long been recognised. Former committees have noted that a subordinate instrument that amends an Act is inconsistent with the fundamental legislative principle requiring that subordinate legislative has sufficient regard to the institution of Parliament.<sup>25</sup>

The explanatory notes offer this justification:

- *the amendments are made in accordance with section 13 of the COVID-19 Emergency Response Act 2020 for the purpose of the continuance of public administration and other activities disrupted by the COVID-19 emergency*
- *the amendments are time limited to provide for an extension until the earlier of 31 December 2020 or until substantive amendments to the Rail Safety National Law (Queensland) Act 2017 can be made; and*

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<sup>22</sup> Explanatory notes, p 5.

<sup>23</sup> Explanatory notes, p 6.

<sup>24</sup> Section 4(5)(d) of the *Legislative Standards Act 1992*.

<sup>25</sup> See the discussion in the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 167, where it is noted that the former Scrutiny of Legislation Committee consistently expressed the view that a subordinate instrument that amends an Act, whether it be the body of the Act or a schedule to the Act, is inconsistent with the fundamental legislative principle requiring that subordinate legislation has sufficient regard to the institution of Parliament.



- *the amendments preserve current definitions to maintain current provisions and do not constitute a policy change.*<sup>26</sup>

The committee notes that the provision is consistent with the recently passed Emergency Response Act, which by its terms expressly contemplates provisions such as those under discussion. Specifically relevant here are the terms of section 13(3) of the Emergency Response Act, which provide that a regulation dealing with time limits may:

- a) expressly modify the period
- b) authorise an entity having a function under the Act to modify the period, or
- c) authorise an entity mentioned in paragraph (b) to delegate or sub-delegate a power given under paragraph (b) to modify the period.

#### Committee comment

The committee is satisfied that the breach of fundamental legislative principle is justified, given the circumstances and the objectives of the regulation.

#### **5.3.3 Explanatory notes comment**

The explanatory notes in the section ‘Consistency with fundamental legislative principles’ canvassed some issues of fundamental legislative principle. However, the issues discussed were incorrect. The explanatory notes discuss breaches of sections 4(4)(b) and 4(4)(c) of the LSA.<sup>27</sup> This is incorrect, as those sections expressly relate only to Bills:

- (4) Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill—
  - (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - ...
  - (c) authorises the amendment of an Act only by another Act.

The issues which do arise, though somewhat similar, are different:

- (5) Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation—
  - ...
  - (d) amends statutory instruments only; and
  - (e) allows the subdelegation of a power delegated by an Act only—
    - (i) in appropriate cases and to appropriate persons; and
    - (ii) if authorised by an Act.

The explanatory notes otherwise comply with part 4 of the LSA.

#### **5.4 Human Rights Act compliance**

The subordinate legislation is compatible with human rights.

##### **5.4.1 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>26</sup> Explanatory notes, p 6.

<sup>27</sup> Explanatory notes, pp 5 and 6.

## **6 Housing and Public Works Legislation (Fees) Amendment Regulation 2020 (SL 119 of 2020)**

The objective of the amendment regulation is to increase fees prescribed in a number of regulations by the government indexation rate of 1.8 per cent. The regulations containing fees are:

- Architects Regulation 2019
- Building Industry Fairness (Security of Payment) Regulation 2018
- Building Regulation 2006
- Housing Regulation 2015
- Plumbing and Drainage Regulation 2019
- Professional Engineers Regulation 2019
- Queensland Building and Construction Commission Regulation 2018
- Residential Services (Accreditation) Regulation 2018
- Residential Tenancies and Rooming Accommodation Regulation 2009
- Retirement Villages Regulation 2018

All the fee increases are within the 1.8 per cent indexation rate (apart from a small number which are higher due to rounding).

### **6.1 Issues of fundamental legislative principle and comment**

No issues of fundamental legislative principle were identified.

### **6.2 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **6.3 Human Rights Act comment**

The subordinate legislation is compatible with human rights.

### **6.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **7 Public Records (Paradise Dam) Amendment Regulation 2020 (SL 133 of 2020)**

The objective of the amendment regulation is to prescribe the Department of Natural Resources, Mines and Energy as the relevant and responsible public authority for public records of the Paradise Dam Commission of Inquiry, which ceased to exist on 30 April 2020.

Under the *Public Records Act 2002*, if a public authority ceases to exist and some or all of its functions will not be continued by another public authority, a regulation prescribing the relevant and responsible public authority for the public records of ceased functions is required.

### **7.1 Issues of fundamental legislative principle and comment**

No issues of fundamental legislative principle were identified.

### **7.2 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **7.3 Human Rights Act comment**

The subordinate legislation is compatible with human rights.

### **7.3.1 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **8 Residential Services (Accreditation) (Extension of Transitional Provision for Retirement Villages) Amendment Regulation 2020 (SL 134 of 2020)**

Certain retirement villages require registration as a retirement village under the *Retirement Villages Act 1999* and also registration and accreditation as a residential service under the *Residential Services (Accreditation) Act 2002* (RSA Act).

To avoid unnecessary dual regulation and registration, Section 4 of the Residential Services (Accreditation) Regulation 2018 (RSA Regulation) exempts a retirement village scheme from the RSA Act if the scheme is accredited by a body recognised by the Chief Executive. Previously (and under an earlier residential services regulation), a retirement village accredited by Aged Care Queensland was exempt from registration and accreditation as a residential service under the RSA Act.

Aged Care Queensland no longer exists, and there is no recognised industry body to accredit retirement villages.

The Australian Retirement Village Accreditation Scheme (ARVAS) is a new voluntary industry accreditation scheme for retirement villages and seniors housing which was established by the industry groups Property Council of Australia and Leading Age Services Australia. ARVAS commenced operating in October 2019.

However, according to the explanatory notes:

*As ARVAS only commenced operations recently, it is difficult to assess the effectiveness of the scheme. Further time is required to consider the effectiveness of ARVAS, and the department will be better able to assess the scheme after ARVAS has been operating for one year.*

*In addition, in order to meet the ARVAS criteria, many operators are now establishing policies and procedures that they may not have previously had in place. Extending the transitional provision in the RSA Regulation for two years, until 31 August 2022, will provide time for intending operators to become compliant and accredited with ARVAS.<sup>28</sup>*

### **8.1.1 Issues of fundamental legislative principle and comment**

No issues of fundamental legislative principle were identified.

### **8.1.2 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **8.1.3 Human Rights Act comment**

The subordinate legislation is compatible with human rights.

### **8.1.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>28</sup> Explanatory notes, p 2.

## **9 Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020 (SL 135 of 2020)**

The objective of the amendment regulation is to postpone the automatic commencement of sections 10 and 11 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* to allow time to develop solutions to unintended outcomes that the provisions will cause. The explanatory notes advise that ‘legislative changes are likely to be required to address these unintended outcomes’.<sup>29</sup>

The explanatory notes state that the intended effect of those sections is that a Performance Based Standards (PBS) vehicle detected operating off-route will lose its PBS Vehicle Approval mass and dimension limits and instead the mass and dimension limits under the Heavy Vehicle (Mass, Dimension and Loading) National Regulation (MDL Regulation) will apply to the vehicle.

However, commencement of the sections as well as ‘existing anomalies and inconsistencies’<sup>30</sup> within the current *Heavy Vehicle National Law Act 2012* (HVNL Act) with regard to the way PBS vehicles are dealt with in the HVNL Act and the Heavy Vehicle (Mass, Dimension and Loading) National Regulation compared to Class 1 and 3 vehicles and other Class 2 vehicles ‘will unfairly penalise PBS vehicles compared with traditional vehicles that do not perform as well as the PBS vehicle’.<sup>31</sup> The explanatory notes further advise:

*As remedies are likely to require further legislative amendments which cannot be achieved before 27 September 2020, it was agreed by responsible Ministers at the Transport and Infrastructure Council on 5 June 2020 that the commencement of sections 10 and 11 be postponed by 12 months to 27 September 2021 to allow a solution to be developed.*

*This approach will retain the status quo in relation to PBS vehicles detected operating off-route until 27 September 2021 and provide time for a legislative strategy to be developed and implemented.*<sup>32</sup>

### **9.1.1 Issues of fundamental legislative principle and comment**

No issues of fundamental legislative principle were identified.

### **9.1.2 Explanatory notes comment**

The explanatory notes comply with part 4 of the LSA.

### **9.1.3 Human rights comment**

The subordinate legislation is compatible with human rights.

### **9.1.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>29</sup> Explanatory notes, p 2.

<sup>30</sup> Explanatory notes, p 2.

<sup>31</sup> Explanatory notes, p 2.

<sup>32</sup> Explanatory notes, p 2.

## 10 Recommendation

In relation to the other subordinate legislation considered in this report, the committee recommends that the Legislative Assembly notes this report.



Shane King MP

**Chair**

**September 2020**

### **Transport and Public Works Committee**

|              |   |
|--------------|---|
| Chair        | Mr Shane King MP, Member for Kurwongbah   |
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